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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,270	01/18/2001	William Gross	IDEALAB.001A	6161

20995 7590 09/09/2003

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EXAMINER

MCCLELLAN, JAMES S

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/765,270

Applicant(s)

GROSS, WILLIAM

Examiner

James S McClellan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: on page 11, line 4, “of a” should be deleted.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 5, 15, 16, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Internet Publication to Ebay ([www.ebay.com](http://www.ebay.com)) available on [www.archive.org](http://www.archive.org).

The Ebay Publication was published on 4/28/99 (see page 1, “Last Updated: 4/28/99”) and was accessed on 9/3/03 via an Internet archive website ([www.archive.com](http://www.archive.com)).

Regarding claim 1, Ebay discloses ranking offerings offered by at least one on-line vendor, comprising: operating a ranking module (using the Feature Auction option, see page 8, wherein the vendor selects whether to use the “Feature Auction” option to place their product at the top of the page, wherein Ebay receives a fee from the vendors that decide to use the “Feature Auction” option) affiliated with a first entity (Ebay), and ranking, with the ranking module, a

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first offering from an on-line vendor relative to second offering from an on-line vendor so as to increase income received by the first entity (Ebay); **[claim 2]** calculating an estimated first selection revenue that corresponds to the revenue received by the first entity (Ebay) when a user selects the first offerings; and calculating an estimated second selection revenue that corresponds to the revenue received by the first entity (Ebay) when the user selects the second offering; and **[claim 5]** calculating an estimated first purchase commission (Feature Auction fee of \$99.95; see page 8) that corresponds to the commission received by the first entity (Ebay) when a user purchases an item offered in the first offering; and calculating an estimated second purchase commission that corresponds to the commission received by the first entity (Ebay) when a user purchases an item offered in the second offering.

Regarding **claim 15**, Ebay discloses a system that ranks offerings by at least one on-line vendor as set forth above for method claim 1. Ebay is relied upon to reject **claims 16 and 18** for same reasons that similar claims 2 and 5 were rejected in the above paragraph.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4, 6-14, 17, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebay Publication in view of U.S. Patent No. 5,664,115 (Fraser).

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The Ebay Publication discloses the method and systems as set forth above, but fails to explicitly disclose estimating a purchase likelihood by a user.

Fraser teaches the use of estimating a purchase likelihood by a user (see column 5, lines 27-34 and column 9, lines 2-7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Ebay Publication with user purchasing likelihood information as taught by Fraser, because determining the likelihood of a user's desire to purchase a product will allow the selling entity to more efficiently display items for purchase to the potential buyer.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Culliss is cited of interest for disclosing a method for presenting results from a search query.

Walker et al. is cited of interest for disclosing a apparatus configured to access historical data associated with an affinity program

Sanders is cited of interest for disclosing an enterprise value enhancement system and method.

Southam is cited of interest for disclosing a computer facilitated product selling system.

Herz et al. is cited of interest for disclosing a system for determining customized prices and promotions.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

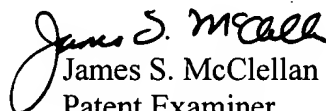
Any response to this action should be mailed to:

Commissioner of Patent and Trademarks  
Washington D.C. 20231

or faxed to:

(703) 305-7687 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Patent Examiner  
A.U. 3627

jsm  
September 3, 2003